IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY THE FIFTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE SRI JUSTICE M.H.S. ANSARI**

**AND**
**THE HON'BLE SRI JUSTICE T.Ch.SURYA RAO**

**WRIT PETITION Nos.9784 and 9846 of 2004**

Between:

M/s Harsha Constructions - Engineers - Contractors,

H. No.8-3-191/101(17/B), First Floor,

Opp: Post Office, Vengalarao Nagar, Hyderabad - 38,
rep. by its Managing Partner, N. Venkateswara Rao,

S/o.Sita Ramaiah, aged 53 yrs.

**..... PETITIONER**

AND

1 The Commercial Tax Officer, Ashoknagar Circle, Hyderabad.
2 M/s.Madhucon Projects Limited, Madhucon House, Flat No. 1129/A, Road No. 36, Hi-Tech City Road, Jubilee Hills, Hyderabad- 33.
3 M/s.Madhucon Binapuri JV. Madhucon House, Flat No. 1129/A, Road No. 36, Hi-Tech City Road,, Jubilee Hills, Hyderabad - 33.
4 The Commercial Tax Officer, Jubilee Hills Circle, Srinagar Colony, Hyderabad.
5 The Commissioner of Commercial Taxes, Excise-Commercial Taxes

Complex, M.J. Road, Nampally, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to

issue an appropriate writ, order or direction particularly in the nature of writ of Mandamus declaring the inaction on the part of the authorities of the Commercial Taxes Department, Government of Andhra Pradesh in general and respondents 1 and 4 in particular in non-recovery of the amounts deducted at source from the writ petitioners' running account bills by respondents 2 and 3 Companies under APGST ACT, 1957 under Section 5H during the assessment years 1998-99 to 2003-04 towards sales tax either at 1% or 2% as recovered by the NHAI Limited in respect of Bandar Canal- Tamileru project in the name of a recoupment/recovery in terms of Clauses of the sub contract agreement as truly reflected in running account bills at Item-4, @ 4% in the running account bills relating to Sabari and Vamsadhara projects work and remitting the same to the credit of the State Government of Andhra Pradesh for necessary onward credit to the account of the writ petitioner towards the payment of the sales tax dues relating to the above mentioned assessment years as illegal, arbitrary, unjust and violative of provisions of Section 5H of the APGST ACT, 1957 and Article 265 of the Constitution of India and consequently direct the respondents 1 and 4 to recover and remit forthwith all the amounts in the aggregate of Rs.74,19,708/- recovered from the writ petitioner at source in any name towards the taxes as reflected in the bills during assessment years 1998-99 to 2003-04 with interest in terms of Section 16(3) of the APGST Act from the date of recovery with all attendant consequences as provided/envisaged under the provisions of the Act and further directing the first respondent not to take any coercive steps against the petitioner for recovering of any sales tax relating to the above mentioned assessment years, extent of Rs. 74,19,708/-and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.M.V.J.K.KUMAR

Counsel for Respondent No.1 : Mr. K.Raji Reddy, Spl.S.C. for Commercial

Taxes

Counsel for Respondent Nos. 4 & 5: G.P.FOR COMMERCIAL TAXES

Counsel for Respondent Nos.2 & 3 : Mr. P.SRINIVASA REDDY

**WRIT PETITION No.9846 of 2004**

Between:

M/s Harsha Concrete Projects (India) Pvt.Ltd.,

H.No.8-3-191/101 (17/B), First Floor, Opp. Post Office,

Vengalarao Nagar Hyderabad-38 rep., by its Managing Director N.Venkateswara Rao, S/o. Sita Ramaiah, Aged 53 years.

**..... PETITIONER**

AND

1 The Commercial Tax Officer, Ashoknagar Circle, Hyderabad.
2 M/s. Madhucon Projects Limited, Madhucon House,

Flat No.1129/A Road No.36, Hi-Tech

City Road, Jubilee Hills, Hyderabad-33.
3 M/s. Madhucon Binapuri JV, Madhucon House,

Flat No.1129/A Road No.36, Hi-Tech
City Road, Jubilee Hills, Hyderabad-33.
4 The Commercial Tax Officer, Jubilee Hills Circle,
Srinagar Colony, Hyderabad.
5 The Commissioner of Commercial Taxes,

Excise-Commercial Taxes Complex,
M.J.Road, Nampally, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction particularly in the nature of writ of mandamus declaring the inaction on the part of the authorities of the Commercial Taxes Department Government of Andhra Pradesh in general and respondents 1 and 4 in particular in non-recovery of the amounts deducted at source from the writ petitioners running accounts bills effected by respondents 2 and 3 companies under APGST ACT 1957 under Section 5H during the assessment years 2000-2001 to 2003-2004 towards sales Tax either at 1% or 2% as recovered by the NHAI Limited in respect of Road and Major Bridge construction at Nidamanuru on Vijayawada-Eluru (NH5) and construction of Bridges at Sullurupet on Tada Nellore Sector of NH5 in the name of a recoupment/recovery in terms of Clauses of the sub contract agreement as truly reflected in running account bills at item-4 by holding such retention of Government moneys by unofficial respondents 2 and 3 and non-remittal of the same to the credit of the State Government of Andhra Pradesh for necessary onward credit to the account of the writ petitioner towards the payment of the sales tax dues relating to the above mentioned assessment years as illegal, arbitrary, unjust and violative of the provisions of Section 5H of the APGST Act 1957 and Article 265 of the Constitution of India and consequently direct the respondents 1 and 4 to recover and remit forthwith all the amounts in the aggregate of Rs.16,35,697/- recovered from the writ petitioner at source in any name towards the taxes as reflected in the bills during assessment years 2000-2001 to 2003-2004 with interest in terms of Section 16 (3) of the APGST Act from the date of recovery with the attendant consequences as provided/envisaged under the provisions of the Act and further declaring the 17 B notice issued by the first respondent as illegal, arbitrary and improper and directing the first respondent not to take any coercive steps against the petitioner for recovering of any sales tax relating to the above mentioned assessment year extent of Rs.16,35,697/- and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.M.V.J.K.KUMAR

Counsel for Respondent No.1 : Mr. K.Raji Reddy, Spl.S.C. for Commercial

Taxes

Counsel for Respondent Nos.4 & 5: G.P.FOR COMMERCIAL TAXES

Counsel for Respondent Nos.2 & 3 : Mr. P.SRINIVASA REDDY

**The Court at the admission stage made the following :**

**ORDER:** (per Sri Justice M.H.S.Ansari)

The above two writ petitions have been heard analogously as the same are filed by the same petitioner claiming identical reliefs. They are being disposed of by this common order. For the sake of convenience, W.P.No.9784 of 2004 is taken up for consideration and orders passed in this writ petition shall also govern W.P.No.9846 of 2004.

Pursuant to a notice before admission, respondents have appeared before the Court and also filed their counter affidavits. Having heard the learned counsel for the respective parties, this Court is inclined to uphold the objection raised on behalf of the State respondents by their learned Special Standing Counsel for Commercial Taxes as to the maintainability of the writ petition on the ground that the dispute is between two private individuals namely, petitioner construction company and respondents 2 and 3, such dispute being in the realm of private law.

In the view that we have taken as above, it would suffice to state a few relevant facts and contentions. The petitioner, a works contractor, is a registered dealer under the APGST Act. The works contract in the case on hand was awarded to second and third respondents by the National Highway Authority of India. The petitioner is the sub-contractor and claims to have executed the works on behalf of the contractors – respondents 2 and 3. Action was initiated by the Sales Tax authorities against the petitioner for recovery of sales tax dues. It is the petitioner's case that respondent No.2 herein have made deductions towards sales tax from the running account bills at different rates and thus it is the responsibility of respondents 2 and 3 to pay the same towards sales tax dues of the petitioners. The same, it is contended, cannot be retained by respondents 2 and 3. On the other hand, the contention of the contractors (respondents 2 and 3) is that no recoveries have been made towards tax, but what has been retained by the said respondents 2 and 3 is the amount due under the agreement subsisting between the petitioner and respondents 2 and 3. In other words, it is a case where the terms of the contract between the petitioner and respondents 2 and 3 that are required to be construed before the relief claimed in the writ petition can be granted to the petitioner. Several contentions of facts in dispute

have been raised before us by the learned counsel respectively appearing for the petitioner and respondents 2 and 3. Some of them are as regards the terms of the agreement and the alleged interpolations therein as also with regard to the alleged interpolations in the running account bills filed by the petitioners. One of the contentions raised before us is that respondents 2 and 3 are not liable for payment of tax while the responsibility for sales tax levies and dues is that of the petitioner both under the terms of the contract subsisting between the parties and also relying upon Section 5H of the APGST Act. It is thus apparent that the central dispute is relating to a contract and construction thereof between the petitioner and non-official respondents 2 and 3. The matter is thus in the realm of private law.

Sri M.V.J.K. Kumar, learned counsel for the petitioner relying upon the judgment of the Supreme Court in **ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.** submitted that there is no bar for entertaining a writ petition even if the same arises out of a contractual obligation and or involves some disputed questions of fact. We are of the view that reliance by the learned counsel for the petitioner upon the said judgment is misplaced. The dispute in the present case, as noticed supra, is between the petitioner and the private respondents 2 and 3. The ratio of the said judgment of the Supreme Court in **ABL International Ltd.** (supra) in the circumstances, has no application. It is not a case where the instrumentality of the State has acted in contravention of the requirement of Article 14 of the Constitution of India. Instant case is one where the terms of the private contract between non-official respondents and the petitioner requires to be construed. The matter falls squarely within the realm of private law. It is, therefore, not a case where a Writ Court should exercise its discretion in favour of the petitioner to entertain the writ petition. The petitioner has alternative remedy, which it is open to it to avail with respect to the claims and reliefs against respondent 2 and 3.

For the reasons afore-stated, the writ petition is dismissed at admission stage without going into the merits of the main controversy. It is clarified that all questions pertaining to the main controversy are left open. The writ petition is accordingly dismissed.

This order shall not, however, preclude the writ petitioner from availing such

other efficacious alternative remedy as may be open to the petitioner at law and as it may be advised.

**W.P.No.9846 of 2004**

On the identity of facts and similarity of contentions raised in W.P.No.9846 of 2004, the order as above passed in W.P.No.9784 of 2004 shall also govern the instant writ petition being W.P.No.9846 of 2004.

Accordingly, for the reasons afore-stated, W.P.No.9846 of 2004 is also dismissed.

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(M.H.S.ANSARI, J.)

15th February 2005.

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(T.Ch.SURYA RAO, J.)

ARS

To

1 The Commercial Tax Officer, Ashoknagar Circle, Hyderabad.
2 The Commercial Tax Officer, Jubilee Hills Circle,
Srinagar Colony, Hyderabad.
3 The Commissioner of Commercial Taxes, Excise-Commercial Taxes

Complex, M.J. Road, Nampally, Hyderabad.

4 Two C.Cs. to Govt. Pleader for Commercial Taxes, High Court

Bldgs., Hyderabad (OUT).

5 Two CD copies.